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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CURTIS WILSON,

Defendant and Appellant.

A122268

(San Francisco City & County
Super. Ct. No. 204054)

Curtis Wilson appeals from a judgment upon a jury verdict finding him guilty of selling cocaine (Health & Saf. Code, § 11352, subd. (a)). Defendant contends that the trial court erred in denying his motion to dismiss the case because the prosecution failed to preserve video surveillance tapes. We affirm.

I. FACTS

At approximately 6:30 p.m. on October 16, 2007, Officer Peter Richardson was the cover officer in a buy/bust operation in the area of 16th and Mission Streets in San Francisco. He was responsible for marking the money to be used in the narcotics purchase, watching the undercover police officer purchase narcotics, and alerting another officer to arrest the seller. He gave two marked \$20 bills to Officer Angel Lozano, who was the buy officer in the operation. Richardson was across the street about 60 to 75 feet away, when Lozano approached defendant, who was in front of 2010 Mission Street. Lozano and defendant had a brief conversation after which defendant handed something to Lozano and Lozano in turn handed something to defendant. Lozano then walked across Mission Street toward Richardson and signaled him that he had purchased

suspected narcotics from defendant. Richardson alerted the arrest team of defendant's location and what he was wearing.

Officer Michael Moody was part of the arrest team on October 16. He and other officers responded to Richardson's information that a narcotics transaction had occurred and followed his directions concerning defendant's location. Moody saw defendant, who matched Richardson's description, going down the stairs into the BART station at 16th and Mission Streets. Moody and Officer Greiner detained defendant. Defendant seemed to have something in his mouth. Moody noticed that it looked like money and asked defendant to spit it out. Defendant spit out the marked \$20 bill. Defendant did not have any narcotics on him. Richardson confirmed that defendant was the person that had sold the narcotics to Lozano.

The narcotics sold to Lozano measured .21 grams, a usable amount of cocaine base.

The parties stipulated that defendant pled guilty and was convicted of a nonviolent nondrug felony in 1998 in San Joaquin County.

II. DISCUSSION

Defendant contends that the trial court erred in denying his motion to dismiss on the ground that the prosecution violated his rights to due process because it failed to preserve video surveillance tapes of the 16th and Mission Street area. We conclude that there was no due process violation.

Defendant moved to dismiss the case on the ground that the prosecution had failed to preserve video surveillance tapes from four street cameras located at 16th and Mission Streets that he claimed would show he was not involved in a narcotics transaction. The court held a hearing on the motion. Lozano testified that he was involved in a transaction with defendant on October 16, 2007, in front of the building at 2010 Mission Street, and that the transaction occurred closer to the building rather than the curb. At the time of the incident, the Department of Emergency Management maintained four community service cameras at the intersection of 16th and Mission Streets that provided elevated views from each of the corners. The cameras are fixed and show views across the intersection and

depict mainly the middle of the intersection itself. They would not be able to focus on anything that was occurring midblock. The footage from the cameras is preserved for seven days, and then is automatically overwritten by new data from the cameras unless there is a request for the data within the seven-day period. No requests were made for the footage of October 16. In order to request footage, a police officer, with the rank of inspector, must make the request in writing and obtain the approval of either the inspector's captain or the deputy chief of investigations. There was no evidence that the cameras were operational on the day of the incident. Based on the evidence in the hearing, the court denied defendant's motion.

Law enforcement agencies have a duty under the due process clause of the Fourteenth Amendment to preserve evidence that might be significant to a suspect's defense. (*California v. Trombetta* (1984) 467 U.S. 479, 485, 488; *People v. Farnam* (2002) 28 Cal.4th 107, 166.) Under this standard, due process requires evidence to be preserved if it satisfies a two-part test: (1) the evidence had exculpatory value that was apparent before the evidence was lost or destroyed; and (2) the nature of the evidence is such that the defendant would be unable to obtain comparable evidence by other reasonably available means. (*People v. Roybal* (1998) 19 Cal.4th 481, 510 (*Roybal*).)

On appeal, we must determine whether the trial court's ruling is supported by substantial evidence, viewing the evidence in the light most favorable to the trial court's ruling. (*Roybal, supra*, 19 Cal.4th at p. 510.)

Here, defendant failed to satisfy the *Trombetta* standard. First, there is no evidence that the videotapes had any exculpatory value. To the contrary, the evidence before the trial court showed that defendant was involved in a drug transaction, and that the cameras at the intersection of 16th and Mission Streets would not have contained any footage of activity occurring midblock where the alleged transaction occurred. Further, there was no evidence that the police viewed the videotapes of the transaction date, or that they acted in bad faith in failing to do so. While defendant argues that the police acted in bad faith in allowing the footage from the cameras to be overwritten, he failed to show bad faith. Not only was there no evidence that the footage would have been

exculpatory, there was no showing that any videotape footage would have included the area in which the alleged transaction occurred. (See *Roybal, supra*, 19 Cal.4th at p. 510 [unless a defendant can show the police acted in bad faith, failure to preserve potentially useful evidence does not constitute a denial of due process].) On the evidence before it, the trial court properly found that there was no due process violation from the failure to preserve the videotape footage.

III. DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

REARDON, Acting P.J.

SEPULVEDA, J.